

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPLICATION NO. 624 OF 2020

(Originating from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamaia in Land Application No. 526 of 2019 delivered by Hon. S. H. Wambili dated 08th September, 2020)

TATU ABDALAH.....APPLICANT

VERSUS

NYASSO KASANGA.....RESPONDENT

Last Order: 24/06/2021

Date of reason for rulling: 29/06/2021

REASONS FOR THE RULING

B.E.K MGANGA, J

The applicant has filed this application praying for extension of time within which she can appeal to this court against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 526 of 2019. The Application is supported by an affidavit of Tatu Abdalah (the Applicant). On the other hand, the Respondent filed a counter affidavit to object the application. When Application came for hearing on 24th June 2021 the Applicant sought leave of the court so that her husband namely Yahaya Ally can make submissions on her behalf. Mr. Kanonyele advocate for the Respondent didn't resist on the ground that section 46 of the Land Disputes Court

Act, [Cap. 216 R.E 2019] permits and that it does not occasion injustice to his client. After being satisfied with the position of the law I allowed the said Yahaya Ally to make submissions on behalf of the Applicant. After hearing submissions of the parties, I granted the application and ordered the applicant to file the appeal within fourteen (14) days and reserved my reasons that I am delivering now.

It was submitted on behalf of the Applicant that the delay to file an appeal within time was caused by matters that are outside her control. The affidavit of the Applicant was adopted to form part of her submissions. It was further submitted on her behalf that the Applicant suffers from permanent epileptic disorder. It was submitted that as she was involved in an accident that affected her brain as a result sometimes loses conscious. Not only that but also, it was submitted that she prayed for judgment, decree and proceedings on 15th September 2020, but she was not supplied in time.

On his part, Mr. Kanonyele advocate for the respondent took a different view arguing that there are no good grounds advanced that made the Applicant not to file the appeal within time. He argued that there is no proof that the Applicant suffers from epileptic. He further submitted that initially Nyasso Kasanga the herein Respondent filed Land

Application No. 29/2016 in Kimara ward Tribunal against Yahaya Ally, the husband of the Applicant as the Respondent and that the same was decided in favour of Nyasso Kassanga. The Said Yahaya Ally filed appeal No.78/2016 in the District Land and Housing Tribunal for Kinondoni but he lost the appeal. Counsel for the Respondent submitted that based on that background, the Applicant filed Land Application No. 526/2019 in the District and Land Tribunal against the Respondent that was dismissed by the Tribunal based on *res judicata* principle. He invited me also to dismiss the application based on the *res judicata* principle as the District Land and Housing Tribunal for Kinondoni did. He concluded by submitting that the application is intended to delay the rights of the Respondent, that there is no chance of intended appeal to succeed and that she was negligent in making follow up of the matter.

I have carefully examined the affidavit and the counter affidavit and considered submissions that were made before me and found that there is no evidence to contradict what was said by the Applicant that she suffers from permanent epileptic disorder. This is clearly stated in paragraph 8 of the Applicant's affidavit. Submissions made by counsel for the Respondent from the bar that there is no proof that she suffers from that disease is not enough. This is because the Applicant has

deposed in her affidavital evidence and nothing was contradicted in the counter affidavit. If the Respondent wanted to challenge it, he could have done so in his Counter affidavit.

It is clear that Application No. 526/ 2019 that was filed by the Applicant in the District Land and Housing Tribunal for Kinondoni against the Respondent was dismissed for being *res judicata* as submitted by counsel for the Respondent. Whether the District Land and Housing tribunal was correct or not to invoke the principle of *res judicata* will be decided by this court after hearing the appeal and not at this stage. Because this is an issue of law that can be raised at the optional of the parties or the court itself.

For the foregoing, I granted the Application without costs and ordered the Applicant to file the appeal within fourteen (14) days.

Order accordingly.

Dated at Dar es Salaam this 29th day of June 2021.




B.E.K. Mganga
JUDGE